

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Ford Motor Company

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A & 27 of the Tax Law :
for the Years 1972 - 1975. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1982, he served the within notice of Decision by certified mail upon Ford Motor Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ford Motor Company
c/o John M. Neberle
The American Rd.
Dearborn, MI 48121

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of June, 1982.

Carmie P. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 18, 1982

Ford Motor Company
c/o John M. Neberle
The American Rd.
Dearborn, MI 48121

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

FORD MOTOR COMPANY

DECISION

for Redetermination of a Deficiency or for
Refund of Franchise Tax on Business Corporations:
under Articles 9-A and 27 of the Tax Law for
the Years 1972 through 1975.

Petitioner, Ford Motor Company, The American Road, Dearborn, Michigan 48121, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Articles 9-A and 27 of the Tax Law for the years 1972 through 1975 (File No. 24830).

A stipulation of facts was executed by John M. Neberle, Esq. for petitioner on July 24, 1981 and by Max Kuperman, Esq. for the Audit Division on November 13, 1981. Petitioner waived the right to a formal hearing and requested that the State Tax Commission render a decision based upon the stipulation.

ISSUE

Whether petitioner is entitled to refund of franchise tax for each of the years at issue, based upon the recomputation of its investment allocation percentage during the course of a field audit.

FINDINGS OF FACT

1. On August 1, 1978, the Audit Division issued to Ford Motor Company ("Ford") a Statement of Tax Reduction or Overpayment for 1972. The Statement reflected a credit in the amount \$390,506.21, plus interest of \$40,443.43, against which deficiencies asserted for the years 1973, 1974 and 1975 were

applied, for a net credit and/or refund of \$139,514.98. The overpayment resulted from the carryback of a 1975 net operating loss.

On August 1, 1978, the Audit Division issued to Ford three notices of deficiency asserting franchise taxes due under Article 9-A of the Tax Law for the years 1973, 1974 and 1975 in the respective amounts of \$133,854.76, \$82,036.53 and \$6,623.53, plus interest. As aforesaid, the deficiencies and interest were reduced to zero by application of the credit for 1972.

2. On October 30, 1978, Ford mailed a timely petition protesting the reduction of its claim for refund for 1972 and the deficiencies for 1973, 1974 and 1975.

By letter dated March 23, 1979, petitioner was advised that its petition had been accepted as perfected.

The answer of the Audit Division was served by mail on April 9, 1979.

3. Ford filed New York State Corporation Franchise Tax Reports for the years 1972, 1973, 1974 and 1975 and paid franchise taxes in the following amounts:

<u>YEAR</u>	<u>TAX PAID PER REPORT</u>
1972	\$2,653,449.81
1973	1,910,619.58
1974	126,232.82
1975	284,518.09

Ford Marketing Corporation ("Marketing"), a wholly-owned subsidiary of Ford, filed reports for the years 1972, 1973 and 1974 and paid franchise taxes in the following amounts:

<u>YEAR</u>	<u>TAX PAID PER REPORT</u>
1972	\$399,916.72
1973	141,330.88
1974	35,726.91

Marketing was merged into Ford on December 31, 1974.

4. For all the years at issue, Ford's investment income was less than 25 percent of its entire net income, and its investment capital was less than 25 percent of its total business and investment capital. Pursuant to section 210, subdivision (6) of the Tax Law, Ford elected to apply its business allocation percentage to entire net income for 1972, 1973 and 1974 and to total business and investment capital for 1975.

5. For the year 1975, Ford had a net operating loss which was carried back to 1972, resulting in a claim for refund for 1972.

6. The reports filed by Ford and by Marketing were audited by corporation tax examiners of the Audit Division. During the course of the audit, officers of Ford and Marketing executed Consents Extending the Period of Limitation of the Assessment of Tax as follows:

<u>CORPORATION</u>	<u>DATE OF CONSENT</u>	<u>YEAR(S) COVERED</u>	<u>EXTENDED DATE FOR ASSESSMENT</u>
Marketing	3/29/76	1972	10/18/77
Ford	3/23/76	1972	10/18/77
Marketing	6/30/77	1972, 1973	12/01/77
Ford	6/29/77	1972, 1973	12/01/77
Marketing	10/18/77	1972, 1973	6/15/78
Ford	10/14/77	1972, 1973	6/15/78
Marketing	2/14/78	1972, 1973, 1974	12/15/78
Ford	2/16/78	1972, 1973, 1974	12/15/78

7. The audit of Ford and Marketing determined that the two corporations were required to file New York State Corporation Tax Reports on a combined basis.

8. The election provided by section 210, subdivision (6) is not available to taxpayers taxed upon the basis of a combined report. At the time of audit, Ford provided data regarding the costs of its investments for computation of the investment allocation percentage for the years at issue. The audit resulted in recomputation of franchise tax liability based upon combined reports for

Ford and Marketing, applying the investment allocation percentage computed on audit.

9. By letter dated January 22, 1980, Ford claimed additional refunds for the years 1972 through 1975 based upon recomputation of the investment allocation percentage for each year, using the fair market values of its investments, and submitted data to support the recomputations. By letter dated November 5, 1980, Ford submitted additional information regarding the recomputation of the investment allocation percentage and the refunds claimed for the years 1972 through 1975.

10. The fair market values of petitioner's investments stated in the material submitted by petitioner on January 22, 1980 were reviewed and confirmed by the staff of the Buffalo District Office of the Audit Division. The recomputations submitted by Ford on January 22, 1980 and November 5, 1980 were reviewed by the staff of said office and corrected to conform with the final field audit workpapers, resulting in refunds due petitioner of \$880.41 for 1975, \$27,407.88 for 1974, \$132,244.20 for 1973 and \$96,048.00 for 1972.

CONCLUSIONS OF LAW

A. That section 1087, subdivision (f) of Article 27 of the Tax Law empowers the State Tax Commission to determine that a corporate taxpayer has made an overpayment of franchise taxes, as follows:

"Effect of petition to tax commission. -- If a notice of deficiency for a taxable year has been mailed to the taxpayer under section one thousand eighty-one and if the taxpayer files a timely petition with the tax commission under section one thousand eighty-nine, it may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except --

"(1) as to overpayments determined by a decision of the tax commission which has become final;..."

Subdivision (g) of said section provides, in relevant part:

"Limit on amount of credit or refund. -- The amount of overpayment determined under subsection (f) shall, when the decision of the tax commission has become final, be credited or refunded in accordance with subsection (a) of section one thousand eighty-six and shall not exceed the amount of tax which the tax commission determines as part of its decision was paid --

* * *

"(2) within the period which would be applicable under subsections (a), (b) or (c), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the tax commission finds that there is an overpayment."

B. That the Notice of Deficiency was issued within the time limitations prescribed by section 1083 of Article 27 of the Tax Law, as extended by agreement of petitioner and the Audit Division. In response to the Notice of Deficiency, Ford timely filed a petition, thereby suspending its right to file a claim for refund. This Commission, however, may determine that petitioner has made overpayments for the years at issue, whether or not it also determines deficiencies for such years. Tax Law section 1087(f).

C. That, had petitioner filed a claim for credit or refund on the date of the mailing of the Notice of Deficiency, stating the grounds as set forth in the stipulation and its letters of January 22 and November 5, 1980 (recomputation of the investment allocation percentage using the fair market values of its investments), the claim would have been timely under section 1087, subdivision (b) of the Tax Law. See Matter of Peter W. Liu and Lydia W. Liu, State Tax Commission, November 27, 1981; Matter of Lamonte Kennedy and Valerie Kennedy, State Tax Commission, January 9, 1981 [TSB-H-81(53)I]. See also Manuel M. Koufman and Charlotte Koufman, 36 T.C.M. 936, which discusses Internal Revenue Code section 6512(b), from which Tax Law section 1087(f) and (g) are derived.

D. That petitioner's overpayments for the years at issue were not in excess of the amounts of taxes it paid for such years and therefore were within the limitations set forth in section 1087, subdivision (g) of the Tax Law.

E. That petitioner, Ford Motor Company, is entitled to refunds for the years 1972, 1973, 1974 and 1975 in the respective amounts of \$96,048.00, \$132,244.20, \$27,407.88 and \$880.41, together with such interest as may be lawfully due.

DATED: Albany, New York

JUN 18 1982

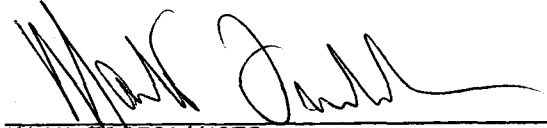
STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER

I will abstain from participation in this decision since the taxpayer is a client of the law firm with which I was associated and I performed extensive legal services for this client up to the time of my appointment as Tax Commission member.


MARK FRIEDLANDER,
Commissioner